

**FORMAL OPINION
2001-F-07**

DATE ISSUED: July 20, 2001

REQUESTED BY: Nevin Van de Streek
Minot City Attorney

QUESTION PRESENTED

Whether a home rule city may permit the use of motorized scooters on sidewalks, notwithstanding N.D.C.C. sections 39-10-52.1 and 12.1-01-05.

ATTORNEY GENERAL'S OPINION

It is my opinion that a home rule city may permit the use of motorized scooters on sidewalks, notwithstanding N.D.C.C. sections 39-10-52.1 and 12.1-1-05.

ANALYSIS

North Dakota Century Code (N.D.C.C.) § 39-10-52.1 states, "No person may drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway." For purposes of title 39, "vehicle" includes "every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks." N.D.C.C. § 39-01-01(89).

It is my opinion that a motorized scooter falls within the definition of "vehicle" in N.D.C.C. § 39-01-01(89). Thus, N.D.C.C. § 39-10-52.1 prohibits the driving of a motorized scooter upon a sidewalk.

Home rule cities may supersede state law in those areas listed in N.D.C.C. § 40-05.1-06 as long as any of those powers is delineated in the city's home rule charter and implemented through ordinances. N.D.C.C. § 40-05.1-06. A city's home rule powers may include:

....

7. . . . to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.

....

N.D.C.C. § 40-05.1-06. It is my opinion that these powers of a home rule city would enable the home rule city to supersede N.D.C.C. § 39-10-52.1 and permit the use of motorized scooters on city sidewalks.

The question has been raised whether N.D.C.C. § 12.1-01-05 prohibits home rule cities from superseding N.D.C.C. § 39-10-52.1. Section 5 of N.D.C.C. ch. 12.1-01 states, in relevant part:

No offense defined in this title or elsewhere by law shall be superseded by any city or county ordinance, or city or county home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offense definitions shall have full force and effect within the territorial limits and other jurisdiction of home rule cities or counties.

Under title 12.1, an “offense” means “conduct for which a term of imprisonment or a fine is authorized by statute after conviction”. N.D.C.C. § 12.1-01-04(20). The legislature’s intent, as expressed in N.D.C.C. § 12.1-01-05, was to uniformly apply criminal law throughout the state. City of Bismarck v. Hoopman, 421 N.W.2d 466, 469 (N.D. 1988).¹

¹ See also 1988 N.D. Op. Att’y Gen. F-20 (“A city, whether or not that city has adopted a home rule charter, may not enact an ordinance which supersedes a state criminal statute,” citing N.D.C.C. § 12.1-01-05.); Letter from Assistant Attorney General Terry Adkins to Darrell Farland (May 16, 1989) (“N.D.C.C. § 12.1-01-05 indicates that crimes defined by state law may not be superseded by a home rule city charter or ordinance.”); and 2000 N.D. Op. Att’y Gen. F-15 (“A city or county may not supercede [sic] a state criminal offense. N.D.C.C. § 12.1-01-05.”).

A violation of N.D.C.C. § 39-10-52.1 is not a criminal offense to which the provisions of N.D.C.C. § 12.1-01-05 would apply. N.D.C.C. § 39-06.1-02 states, in part, "Any person cited, in accordance with sections 39-07-07 and 39-07-08, for a traffic violation under state law or municipal ordinance, other than an offense listed in section 39-06.1-05, is deemed to be charged with a noncriminal offense." Section 39-10-52.1, N.D.C.C. is not an offense listed in N.D.C.C. § 39-06.1-05. Section 39-06.1-06, N.D.C.C. states in part:

The fees required for a noncriminal disposition pursuant to either section 39-06.1-02 or 39-06.1-03 must be as follows:

....

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars. . . .

....

Section 39-06.1-09, N.D.C.C. provides that a violation of the provisions of chapter 39-10 is a "moving violation" for the purposes of section 39-06.1-06. Thus, a violation of N.D.C.C. § 39-10-52.1 is a "moving violation", a noncriminal offense resulting in a fee of twenty dollars. See Zimmerman v. N.D. Dep't of Transp. Dir., 543 N.W.2d 479, 481 (N.D. 1996) (Failure to comply with N.D.C.C. § 39-10-08(1) is a moving violation under N.D.C.C. § 39-06.1-09, subject to a twenty dollar fine under N.D.C.C. § 39-06.1-06.)

Because a violation of N.D.C.C. § 39-10-52.1 is not a criminal violation, N.D.C.C. § 12.1-01-05 does not prohibit home rule cities from superseding the provisions of N.D.C.C. § 39-10-52.1.

In conclusion, it is my opinion that a home rule city may permit the use of motorized scooters on sidewalks, notwithstanding N.D.C.C. §§ 39-10-52.1 and 12.1-01-05 as long as the city's home rule charter includes the necessary powers and those powers are properly implemented through city ordinances.

EFFECT

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented are decided by the courts.

Wayne Stenehjem
Attorney General

FORMAL OPINION 2001-F-07

July 20, 2001

Page 4

Assisted by: Lea Ann Schneider
Assistant Attorney General